

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27669

FILE: B-214448; B-214484 **DATE:** March 13, 1984

MATTER OF: J.R. Youngdale Construction Co. and
John R. Selby, Inc.

DIGEST:

Agency properly awarded small business set-aside contracts to a firm determined to be small by a SBA regional administrator where the awards were made after the regional administrator's ruling but prior to the protester's appeals to the SBA's Office of Hearings and Appeals for a final ruling.

J.R. Youngdale Construction Co. and John R. Selby, Inc. protest the award of contracts to Sierra Blanca, Inc. under invitation for bids (IFB) Nos. N62474-82-B-0441 and N62474-81-B-8909 issued by the Department of the Navy as small business set-asides. Youngdale and Selby complain that the Navy awarded the contracts despite a final ruling by the Office of Hearings and Appeals of the Small Business Administration (SBA) that Sierra Blanca was not a small business concern for purposes of both procurements. We summarily deny the protests.

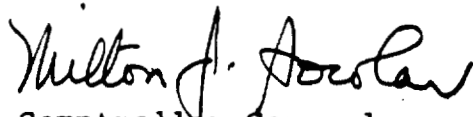
Sierra Blanca was the apparent low bidder under both invitations. Youngdale and Selby separately protested to the Navy, asserting that Sierra Blanca was other than a small business. In accordance with Defense Acquisition Regulation (DAR) § 1-703(b)(1)a. (DAC #76-19, July 27, 1979), the Navy forwarded the firms' protests to the SBA's San Francisco office for size status determinations. By decisions of December 29, 1983, the SBA Region IX Administrator found Sierra Blanca to be a small business, and the Navy awarded the contracts to Sierra Blanca on December 30. Youngdale and Selby subsequently appealed the regional administrator's determinations to the SBA's Office of Hearings and Appeals (which assumed the function of the Size Appeals Board, see 48 Fed. Reg. 55832, December 16, 1983), which, by decision of February 7, 1984, reversed those determinations. The firms now contend that it was improper for the Navy to make awards to Sierra Blanca prior to the SBA's final ruling on their size status appeals. We do not agree.

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DAR § 1-703(b)(3)(i) requires that a contracting agency suspend procurement action for 10 working days pending an SBA district office's determination of an initial size status protest. Under DAR § 1-703(b)(3)(ii), the agency is required to suspend action for an additional 20 working days if notified prior to award that a subsequent appeal has been made to the Office of Hearings and Appeals. Here, the awards were made on December 30, 1 day after the regional administrator issued her determinations, which Youngdale and Selby assert they did not receive until January 4, 1984.

We find nothing improper in the Navy's awards to Sierra Blanca. As already indicated, the agency is only required to extend the procurement suspension period if notified prior to award of a subsequent appeal of a regional administrator's ruling. There is no obligation that an agency withhold award because of the existence of procedures for the appeal from an initial size status determination. Therefore, while Youngdale and Selby could not notify the Navy prior to award of their intent to appeal because they did not receive the regional administrator's determinations until after the awards, that fact does not render the Navy's awards to Sierra Blanca legally objectionable.

The protests are summarily denied.

for 
Comptroller General
of the United States